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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,966	09/01/2004	James Andrew Waddy JR.		3774

7590 01/19/2006  
JAMES ANDREW WADDY JR.  
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EXAMINER

PARSLEY, DAVID J

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/756,966	WADDY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David J. Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 1-14-04.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1-14-04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **Detailed Action**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either an application data sheet or supplemental oath or declaration.

### ***Specification***

2. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or

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REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a).

"Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(f) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(g) BRIEF SUMMARY OF THE INVENTION.

(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(i) DETAILED DESCRIPTION OF THE INVENTION.

(j) CLAIM OR CLAIMS (commencing on a separate sheet).

(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The disclosure is objected to because of the following informalities: the specification should include the headings listed above where appropriate.

Further, it is unclear to whether the specification amendment dated 1-14-05 is a substitute specification or replacement sheets.

Further, a brief description of each drawing figure must be included under the Brief Description of the Drawings heading.

Further, reference numerals used in the drawing figures must be included in the specification where applicable.

Appropriate correction is required.

*Drawings*

3. The drawings are objected to because it is unclear to whether the drawings filed on 11-26-04 are substitute drawings or new drawings. Further, the drawings should include reference

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numerals for each structural element of the invention which match the reference numerals found in the specification. Further, the application title should be deleted from the pages of the drawing figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bait on the fishhook and the bag closed on the hook by the drawstring must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

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even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

4. Claims 1-6 are objected to because of the following informalities: each claim should include only one period at the end of each claim. For example the period after “1” in line 1 of claim 1 and after “bag” in line 14 of claim 1 should be deleted. Appropriate correction is required.

Claim 1 is objected to because of the following informalities: “reasily” in line 8 of claim 1 should be - -readily- -.

Further in line 3 of claim 1, “drawstring” should not be in parentheses. A recommendation to the claim language is as follows, in place of “(drawstring)” add - -via a drawstring- -. Appropriate correction is required.

Claim 1 recites the limitation "the fishhook" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the pointed end of the fishhook" in lines 9-10. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "ie" in line 2 implies that other types of fish other than rockfish, croaker or fish can be claimed and therefore it is unclear to what other types of fish are to be claimed as part of the claimed invention. Further, it is recommended that applicant use proper Markush groupings when claiming a group of different components. For example in claim 3 replace "...wherein the specific fish is salt water or brackish water ie: rockfish, croaker or trout..." with - the specific fish is a saltwater or brackish water fish selected from the group consisting of rockfish, croaker and trout...- .

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,247,260 to Kandlbinder et al. in view of U.S. Patent No. 4,563,832 to Drebot.

Referring to claim 1, Kandlbinder discloses in a fishing lure comprising a bag – at 10,20, having sidewalls – see at 20 in figures 1-2, formed of open mesh material – see figures 1-2, closed at one end – see at 18 in figures 1-2, and open at the opposite end – see at 16 in figure 1, having drawstring means – at 22, for drawing the open end closed, thereby enclosing the fishhook – at 14, within the bag – see figure 3, a leader – see the line attached to the bag in figure 4, attached to the fishhook – at 14, extending through the open end of the bag – see for example figures 2-4, such that the bag is slideably mounted solely on the fishhook – at 14 – see figures 2-3 where the bag is in direct contact with only the fishhook – at 14 and the bait – at 12 on the fishhook, whereby bait – at 12, may be placed on the fishhook – see figures 1-3, and the bag then closed by the drawstring – at 22 – see figure 2, the bait begin readily visible – see through the mesh material – at 20 in figures 1-3, and olfactorily attractive to fish by reason of the open mesh characteristic of the bag – see for example figures 1-3, and the pointed end of the fishhook is capable of penetrating the bag by reason of its open mesh characteristics for hooking a fish – see figure 3, the improvement comprising the bag is made of a plastic/polymer mesh material – see column 4 lines 1-13, and is designed to catch any class of fish and is open only at one end – see at 16 in figure 1, whereby the bait – at 12, may be placed on the fishhook – at 14 in the bag – at 20, and the bag being closed at the top with a drawstring – at 22 and slideably mounted on the hook – see for example figures 1-3 where the bag is adjustable along its longitudinal length via the flexible material – at 20 and the drawstring – at 22. Kandlbinder et al. does not disclose the bag is made of a nylon material. Drebot does disclose a bait bag – at 10-14, made of a nylon mesh material – see for example figure 1 and column 4 lines 9-20. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kandlbinder et al. and add the bait



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bag made of a nylon material of Drebot, so as to allow for the device to be both flexible and durable while allowing easy access to the components housed in the bag.

Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kandlbinder et al. as modified by Drebot as applied to claim 1 above, and further in view of U.S. Patent No. 5,216,829 to Morton.

Referring to claim 2, Kandlbinder et al. as modified by Drebot does not disclose the mesh bag is soaked in a desired shellfish or fish oil to enhance the olfactory attractiveness to a specific class of fish. Morton does disclose the mesh bag – at 1-2, is soaked in a desired shellfish or fish oil to enhance the olfactory attractiveness to a specific class of fish – see for example column 3 lines 54-58. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kandlbinder et al. as modified by Drebot and add the bag soaked in shellfish or fish oil of Morton, so as to allow for the device to emit a scent which is attractive to fish when in use.

Referring to claim 6, Kandlbinder et al. as modified by Drebot does not disclose the bag has various colors to enhance the visual attractiveness of the bait and bag to fish. Morton does disclose the bag has various colors to enhance the visual attractiveness of the bait and bag to fish – see for example column 4 lines 15-32. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kandlbinder et al. as modified by Drebot and add the bag being colored of Morton, so as to allow for the device to attract fish during use.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kandlbinder et al. as modified by Drebot as applied to claim 1 above, and further in view of U.S. Patent No. 6,955,006 to Hastings.

Referring to claim 2, Kandlbinder et al. as modified by Drebot does not disclose the mesh bag is soaked in a desired shellfish or fish oil to enhance the olfactory attractiveness to a specific class of fish. Hastings does disclose the mesh bag – at 12,14, is soaked in a desired shellfish or fish oil to enhance the olfactory attractiveness to a specific class of fish – see for example figure 1 and column 4 lines 4-45. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kandlbinder et al. as modified by Drebot and add the bag soaked in shellfish or fish oil of Hastings, so as to allow for the device to emit a scent which is attractive to fish when in use.

Referring to claim 3, Kandlbinder et al. as modified by Drebot and Hastings further discloses the specific fish is a saltwater or brackish water fish wherein the oil is crab oil or shellfish oil – see for example column 1 lines 61-62 and column 4 lines 4-45 of Hastings.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kandlbinder et al. as modified by Drebot and Hastings as applied to claim 2 above, and further in view of U.S. Patent No. 862,150 to Fredericks. Kandlbinder et al. as modified by Drebot and Hastings further discloses the bait is a shellfish – see for example column 4 lines 4-45 of Hastings. Kandlbinder et al. as modified by Drebot and Hastings does not disclose the bait is a soft-shelled crab attached to the fishhook. Fredericks does disclose the bait in the bag – at 1, is a soft-shelled crab – see figure 3 and page 1 lines 77-78, attached to the fishhook – at 9 – see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kandlbinder et al. as modified by Drebot and Hastings and add the bait being a soft-shelled crab of Fredericks, so as to allow for the device to be more attractive to fish.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kandlbinder et al. as modified by Drebot as applied to claim 1 and further in view of Hastings and Fredericks. Kandlbinder et al. as modified by Drebot further discloses a method for catching a particular class of fish, wherein the method comprises utilizing the fishing lure of claim 1, wherein the method comprises placing bait – at 12 of Kandlbinder et al., into the bag – at 20 – see for example figures 1-3 of Kandlbinder et al., and slideably mounting the bag – at 20, onto a hook – at 14, attached to a leader – see at the bag in figure 4 of Kandlbinder et al. and see figures 1-3 of Kandlbinder et al. where the bag is adjustable along its longitudinal length via the flexible material – at 20 and the drawstring – at 22. Kandlbinder et al. as modified by Drebot does not disclose the step of presoaking the open mesh bag in a desired oil to enhance the olfactory attractiveness to a specific class of fish. Hastings does disclose the mesh bag – at 12,14, is soaked in a desired shellfish or fish oil to enhance the olfactory attractiveness to a specific class of fish – see for example figure 1 and column 4 lines 4-45. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kandlbinder et al. as modified by Drebot and add the bag soaked in shellfish or fish oil of Hastings, so as to allow for the device to emit a scent which is attractive to fish when in use. Kandlbinder et al. as modified by Drebot and Hastings further discloses the bait is a shellfish – see for example column 4 lines 4-45 of Hastings. Kandlbinder et al. as modified by Drebot and Hastings does not disclose the bait is a soft-shelled crab attached to the fishhook. Fredericks does disclose the bait in the bag – at 1, is a soft-shelled crab – see figure 3 and page 1 lines 77-78, attached to the fishhook – at 9 – see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take

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the device of Kandlbinder et al. as modified by Drebot and Hastings and add the bait being a soft-shelled crab of Fredericks, so as to allow for the device to be more attractive to fish.

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to scented bags used as fishing lures in general:

U.S. Pat. No. 856,867 to Hayward – shows bait bag and hook

U.S. Pat. No. 3,273,277 to Valentine – shows bag with bait and leader

U.S. Pat. No. 4,603,502 to MacDonald – shows bait container with hook

U.S. Pat. No. 4,788,788 to Brockett – shows bait container housing hook

U.S. Pat. No. 4,809,455 to Smart – shows olfactory lure

U.S. Pat. No. 4,821,449 to Hafer – shows lure bag

U.S. Pat. No. 4,839,982 to Wood – shows bait bag, hook, drawstring and leader

U.S. Pat. No. 4,841,664 to Baldwin – shows bait container and hooks

U.S. Pat. No. 4,961,280 to Hudson – shows bait bag housing hook

U.S. Pat. No. 5,071,659 to Shumaker – shows olfactory fish lure

U.S. Pat. No. 6,319,875 to Brandolino – shows lure bag

U.S. Pat. No. 6,848,210 to Altman et al. – shows bait bag

WO 86/06251 – shows bait bag with hook and oil attractant

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley  
Patent Examiner  
Art Unit 3643

It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.

### **CERTIFICATE OF MAILING**

To ensure that the Applicant's mailed response is considered timely filed, it is advisable to include a "certificate of mailing" on at least one page (preferably on the first page) of the response. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on (date).

(Typed or printed name of the person signing this certificate)

(signature)

### **CERTIFICATE OF TRANSMISSION**

Alternatively, if applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)\_\_\_\_-\_\_\_\_ on (date).

(Typed or printed name of the person signing this certificate)

(signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They must be signed, and the date must be the actual date on which it is mailed or transmitted. For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date the U.S. Postal Service actually delivers the response, or the fax is "date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.

In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally** signed Certificate of Mailing or Transmission statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

**NOTICE TO APPLICANT:** In the case of lost or late responses the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or a private shipper such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.